

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1414 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE CO.LTD.

Versus

PURIBEN ALIAS GAYATRIDEVI C MEHTA

Appearance:

MR RAJNI H MEHTA for Petitioner
MR JITENDRA M PATEL for Respondent No. 1
MR JS PARMAR for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. The New India Assurance Co., opposite party No.3, in the claim petition, has filed this Appeal challengng the Award of the Motor Accident Claims Tribunal, Narol,

rendered on 19.1.1984.

2. Brief facts are that Anilkumar Chandrakant Mehta, doing the work of wireman and dealing in electric goods purchased some electrical goods. On 20.6.1980, he was going in Truck No.GTS 6155 from Vitthal Vadi to Bhimnath. At about 8.00 or 8.30 p.m. when he was near village Barvala the truck overturned. The deceased who was sitting over the goods loaded in the truck was crushed under the iron bars, etc. loaded in the truck. He died at the spot. The claim petition was preferred by his legal representatives.

3. The petition was contested by the owner, driver as well as by the appellant. The plea of the appellant was that the truck was no doubt insured with the Insurance Co. but since the deceased was gratuitous passenger in the said truck hence the Insurance Company was not liable to pay any compensation.

4. Shri R.H.Mehta, learned Counsel for the appellant and Shri T.J.Patel, for and on behalf of Shri J.M.Patel for the respondent No.1 have been heard.

5. Admittedly it was a goods vehicle in which deceased was travelling along with his goods. The truck was loaded with iron bars which did not belong to the deceased. The accident and involvement of the truck No.GTS 6155 is not disputed by the appellant. The appellant however placed reliance upon the Apex Court's verdict in Smt. Mallawwa, etc. v/s. Oriental Insurance Co. Ltd., reported in JT 1998 (8) 217. On the facts stated above the law laid down by the Apex Court in Smt. Mallawwa's case (Supra) is fully applicable to the present case with all force. It was a goods vehicle in which the deceased was travelling. It matters little that he was travelling with his own electric goods. Basically the truck was used for carriage of iron bars. The iron bars did not belong to the deceased. Consequently the vehicle cannot be said to have been used regularly for carriage of passengers. If this is so then the Insurance Company could not be held liable for payment of any compensation to the respondent No.1. The Award of the Tribunal against the appellant cannot be sustained.

6. The Appeal, therefore, succeeds and is hereby allowed. The impugned order dated 19.1.1984 is quashed only against the appellant New India Assurance Co.Ltd. The Award of the Tribunal against opponents No.1 & 2 who are respondents No.2 & 3 in this Appeal is maintained.

The claimant - respondent No.1 is at liberty to execute Award against the respondents No.2 & 3 forthwith. The amount of compensation, cost and interest, if any, deposited by the appellant, and not disbursed wholly or partly, shall be refunded to the appellant on proper application. No order as to costs.

sd/-

Date : April 06, 2000 (D. C. Srivstava, J.)

sas